

MINNESOTA SENTENCING GUIDELINES COMMISSION
SUMMARY OF ADOPTED MODIFICATIONS TO THE SENTENCING GUIDELINES

August, 1995

I. ADOPTED MODIFICATIONS TO GO INTO EFFECT FOR CRIMES COMMITTED ON OR AFTER AUGUST 1, 1995.

- A. *The 1994 Legislature passed a law requiring a mandatory prison sentence for certain repeat offenders. The following language modifies section II.E. Mandatory Sentences: to help clarify the implementation of this new law under the sentencing guidelines:***

When an offender is sentenced according to Minn. Stat. § 609.152, subd. 2a, the presumptive disposition is commitment to the commissioner and the court must impose and execute the presumptive duration unless a longer mandatory minimum sentence is otherwise required by law or the court imposes a longer aggravated durational departure.

- B. *The Commission decided to place the crime of Female Genital Mutilation - 609.2245 on the Unranked Offense List.***

II. OTHER ADOPTED MODIFICATIONS TO GO INTO EFFECT FOR CRIMES COMMITTED ON OR AFTER AUGUST 1, 1995, REVIEWED BY THE 1995 LEGISLATURE.

- A. *A felony offense was recently discovered that has not been considered for ranking by the Commission. This crime is technically unranked at this time. The Commission adopted a severity level ranking of I for this crime.***

Severity Level I

False Declaration - 256.984

- B. *The crime of Lottery Fraud was on the unranked offense list and the Commission reviewed information over the last several years on the types of Lottery Fraud prosecutions and where judges ranked these crimes. The Commission adopted a severity level ranking of I for the following provision of Lottery Fraud:***

Severity Level I

Lottery Fraud - 609.651, subd. 1 with subd. 4(a)

The remaining felony level subdivisions will remain on the unranked offense list because there had been no prosecutions under subd. 2 or 3 and those crimes sentenced under subd. 4(b) would involve larger monetary losses.

- C. *The Commission adopted a proposal to change the manner in which the criminal history***

score is calculated for enhanced felonies by adding the following language to section II.B. of the sentencing guidelines and commentary:

6. When determining the criminal history score for a current offense that is a felony solely because the offender has previous convictions for similar or related offenses, the prior conviction upon which the enhancement is based may be used in determining custody status, but cannot be used in calculating the remaining components of the offender's criminal history score.

Comment

II.B.601. *There are a number of instances in Minnesota law in which misdemeanor or gross misdemeanor behavior carries a felony penalty as a result of the offender's prior record. The Commission decided that in the interest of fairness, a prior offense that elevated the misdemeanor or gross misdemeanor behavior to a felony should not also be used in criminal history points other than custody status. Only one prior offense should be excluded from the criminal history score calculation, unless more than one prior was required for the offense to be elevated to a felony. For example, Assault in the Fifth Degree is a felony if the offender has two or more convictions for assaultive behavior. In those cases the two related priors at the lowest level should be excluded. Similarly, theft crimes of more than \$200 but less than \$500 are felonies if the offender has at least one previous conviction for an offense specified in that statute. In those cases, the prior related offense at the lowest level should be excluded.*

7. 6- The criminal history score is the sum of points accrued under items one through four above.

- D. The Commission adopted a proposal to place the crime of Aiding an Offender, Accomplice After the Fact - 609.495, subd. 3 on the Unranked Offense List. Subdivision 1 will remain ranked at severity level I.**

III. ADOPTED MODIFICATIONS TO RANK THE SEVERITY OF NEW OR AMENDED CRIMES PASSED BY THE 1995 LEGISLATURE - EFFECTIVE AUGUST 1, 1995

- A. The Commission adopted the following severity level rankings:**

Severity Level VIII

Criminal Abuse of Vulnerable Adult (death) - 609.2325, subd. 3 (1)
Manslaughter 1 - 609.20 (1), & (2) & (5)

Severity Level VII

Criminal Abuse of Vulnerable Adult (great bodily harm) - 609.2325, subd. 3 (2)
Manslaughter 2 - 609.205 (1) & (5)

Severity Level V

Financial Exploitation of a Vulnerable Adult (over \$2,500) - 609.2335

Severity Level IV

Criminal Abuse of Vulnerable Adult (substantial bodily harm) - 609.2325, subd. 3 (3)

Severity Level I

Assaulting or Harming a Police Horse - 609.597, subd. 3 (3)

Unranked List

Assaulting or Harming a Police Horse - 609.597, subd. 3 (1) & (2)

Registration of Predatory Offenders - 243.166, subd. 5

- B. *The Commission considered the changes made by the 1995 Legislature to the following crimes and will continue to rank these crimes at the current severity levels, unless otherwise noted above:***

Burglary 1, Criminal Sexual Conduct 2 & 4, Death of an Unborn Child, Escape from Custody, Injury to an Unborn Child, Murder 1, Murder 2, Pattern of Harassing Conduct, Receiving Profit Derived from Prostitution, and Tampering with a Witness.

- C. *The following language is added to commentary to clarify that the new crime of Knowing Transfer of Communicable Disease is ranked according to the underlying crime chosen for prosecution.***

II.A.08. Knowing Transfer of Communicable Disease, Minn. Stat. § 609.2241, is prosecuted under section 609.17, 609.185, 609.19, 609.221, 609.222, 609.223, 609.2231, or 609.224. The severity level ranking for this crime would be the same as the severity level ranking of the crime for which the offender is prosecuted. For example, if the offender commits this crime and is convicted under Assault in the 1st Degree, Minn. Stat. § 609.221, the appropriate severity level ranking would be severity level VIII.

- D. *The following crime is added to the Misdemeanor and Gross Misdemeanor Offense List:***

Criminal Abuse of Vulnerable Adult (bodily harm)
609.2325, subd. 3(a) (4)

IV. ADOPTED MODIFICATIONS TO CLARIFY OR MAKE TECHNICAL CHANGES - EFFECTIVE AUGUST 1, 1995

- A. *The following reference to criminal vehicular operation is amended to criminal vehicular homicide and injury:***

II.B.202. . . . However, one gross misdemeanor offense -- aggravated driving while intoxicated -- is particularly relevant in sentencing cases of criminal vehicular ~~operation~~ homicide or injury. Because of its particular relevance in cases of this nature, a custody status point shall be assigned if the offender is under probation, jail, or other custody supervision following a gross misdemeanor conviction of aggravated DWI under section 169.121, 169.1211 or 169.129, when the felony for which the offender is being sentenced is criminal vehicular ~~operation~~ homicide or injury, and the criminal vehicular ~~operation~~ offense occurred while under that supervision.

- B. *The Commission amended Section II.C. Presumptive Sentence to clarify the current***

policy for escapes from executed prison sentences. Currently, this policy is only referenced in the section on consecutive sentencing.

. . . Similarly, when the current conviction offense is a severity level VI drug crime or sale of cocaine and there was a previous adjudication of guilt for a felony violation of Chapter 152 or a felony-level attempt or conspiracy to violate Chapter 152, or was convicted elsewhere for conduct that would have been a felony under Chapter 152 if committed in Minnesota (See Minn. Stat. § 152.01, subd. 16a) before the current offense occurred, the presumptive disposition is Commitment to the Commissioner of Corrections. The presumptive duration of sentence is the fixed duration indicated in the appropriate cell of the Sentencing Guidelines Grid, or the mandatory minimum, whichever is longer. In addition, the presumptive disposition for escapes from executed sentences is Commitment to the Commissioner of Corrections and the presumptive duration is determined by the appropriate cell of the Sentencing Guidelines Grid, or the mandatory minimum, whichever is longer.

C. The following language change to commentary will help clarify the rationale for the severity level rankings of crimes involving a mandatory minimum:

II.E.02. *The Commission attempted to draw the dispositional line so that the great majority of offenses that might involve a mandatory sentence would fall below the dispositional line. However, some cases carry a mandatory prison sentence under state law but fall above the dispositional line on the Sentencing Guidelines Grid; e.g., Assault in the Second Degree. When that occurs, imprisonment of the offender is the presumptive disposition. The presumptive duration is the mandatory minimum sentence or the duration provided in the appropriate cell of the Sentencing Guidelines Grid, whichever is longer. These crimes are ranked above the dispositional line because the Commission believes the durations at these levels are more proportional to the crime than the durations found at the higher severity levels where prison is recommended regardless of the criminal history score of the offender. For example, the mandatory minimum prison sentence for Assault in the Second Degree involving a knife is one year and one day. For someone with no criminal history score, the guidelines recommend a 21 month prison sentence based on the severity level VI ranking. The Commission believes this sentence is more appropriate than the 48 month prison sentence that would be recommended if this crime were ranked at severity level VII which is the first severity level ranked completely below the dispositional line.*

D. The Commission adopted the following changes to section II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers to clarify language regarding crimes committed for the benefit of a gang. The new language explains how to determine the appropriate duration when attempts or mandatory minimums are involved:

For persons ~~convicted of~~ sentenced under Minn. Stat. § 609.229, subd. 3 (a) where there is a sentence for an offense committed for the benefit of a gang, the presumptive sentence is determined by locating the Sentencing Guidelines Grid cell defined by the offender's criminal history score and the severity level of the underlying crime with the highest severity level, and the duration contained therein plus an additional 12 months. If the underlying crime carries a mandatory minimum prison sentence, the 12 months is added to the mandatory minimum or the duration in the appropriate cell, whichever is greater. If the underlying crime is an attempt, the 12 months is added to the respective duration first and then divided by two, but the duration shall not be less than one year and one day.

E. The following language is confusing and is deleted:

~~**II.G.02.** When an offender is convicted of two or more offenses, and the most severe offense is a conviction for attempt or conspiracy under Minn. Stat. § 609.17 or 609.175, the presumptive sentence duration shall be the longer of (1) the duration for the attempt or conspiracy conviction, or (2) the duration for the next most severe offense of conviction.~~

~~**II.G.03.**~~ **II.G.02.** If the fixed presumptive sentence is an odd number . . .

F. The following repealed or non-felony crimes are updated or deleted from the guidelines:

Theft Related Offense List

~~Assistance Transaction Card Fraud
256.986, subd. 3~~

Severity Level IV

~~Perjury - 290.53, subd. 4; 300.61; & 609.48, subd. 4 (2)~~

Unranked Offense List

~~Forced execution of a declaration - 145B.10, subd. 3 145B.105
Possession of pictorial representations of minors - 617.247
Unlawful Transfer of Sounds; Sales - 325E.20 325E.201~~

G. The Commission adopted the following language to clarify that jail credit should not be extended for electronic monitoring:

III.C.02. . . . Credit for time spent in custody as a condition of a stay of imposition or stay of execution is limited to time spent in jails, workhouses, and regional correctional facilities. Credit should not be extended for time spent in residential treatment facilities or on electronic monitoring as a condition of a stay of imposition or stay of execution.

V. OTHER PROPOSED MODIFICATIONS - EFFECTIVE AUGUST 1, 1996, AFTER THE 1996 LEGISLATURE HAS REVIEWED THE ADOPTED MODIFICATIONS

A. Several felony offenses were recently discovered that have not been considered for ranking by the Commission. These crimes are technically unranked at this time. The Commission adopted the following severity level rankings for these crimes:

Severity Level I

Nonsupport of Spouse or Child - 609.375, subd. 2a

Theft Related Offense List

Theft from Coin Operated Machines
609.52, subd. 2 (7)

Unranked Offense List

B. *The Commission adopted a proposal to amend Section II.C. of the guidelines to clarify that the Commission's intent is to only include severity level VI drug crimes:*

C. Presumptive Sentence: . . . Similarly, when the current conviction offense is a severity level VI drug crime ~~or sale of cocaine~~ and there was a previous adjudication of guilt for a felony violation of Chapter 152 or a felony-level attempt or conspiracy to violate Chapter 152, or was convicted elsewhere for conduct that would have been a felony under Chapter 152 if committed in Minnesota (See Minn. Stat. § 152.01, subd. 16a) before the current offense occurred, the presumptive disposition is Commitment to the Commissioner of Corrections. The presumptive duration of sentence is the fixed duration indicated in the appropriate cell of the Sentencing Guidelines Grid, or the mandatory minimum, whichever is longer.

C. *The Commission adopted a proposal to amend Section II.B.2 of the guidelines to clarify the different possible types of custody status:*

2. The offender is assigned one point if he or she was on probation, ~~or parole, supervised release, conditional release,~~ or confined in a jail, workhouse, or prison following conviction of a felony or gross misdemeanor or an extended jurisdiction juvenile conviction, or released pending sentence at the time the felony was committed for which he or she is being sentenced.

II.B.201. . . . Criminal justice custodial status includes probation (supervised or unsupervised), parole, supervised release, conditional release, or confinement in a jail, workhouse, or prison, or work release, following conviction of a felony or gross misdemeanor, or release pending sentence following the entry of a plea of guilty to a felony or gross misdemeanor, or a verdict of guilty by a jury or a finding of guilty by the court of a felony or gross misdemeanor. . .

D. *The Commission adopted a proposal to increase the severity level ranking of Receiving Stolen Property (firearm) to make it consistent with the ranking for Theft of a Firearm:*

Severity Level III

~~Receiving Stolen Property (firearm) - 609.53~~

Severity Level IV

Receiving Stolen Property (firearm) - 609.53

E. *The Commission adopted a proposal to amend the section on consecutive sentencing to reflect policy that is less confusing, more consistent, and easier to apply.*

F. Concurrent/Consecutive Sentences: When an offender is convicted of multiple current offenses, or when there is a prior felony sentence which has not expired or been discharged, concurrent sentences shall be given in all cases not covered below. ~~The most severe offense among multiple current offenses determines the appropriate offense severity level for purposes of determining the presumptive guideline sentence.~~

There are two situations in which consecutive sentences are presumptive; there are four situations in

which consecutive sentences are permissive. The use of consecutive sentences in any other case constitutes a departure from the guidelines and requires written reasons pursuant to Minn. Stat. § 244.10, subd. 2 and section E of these guidelines.

When consecutive sentences are imposed, offenses are sentenced in the order in which they occurred.

For persons who, while on probation, parole, or incarcerated, pursuant to an offense committed on or before April 30, 1980, commit a new offense for which a consecutive sentence is imposed, service of the consecutive sentence for the current conviction shall commence upon the completion of any incarceration arising from the prior sentence.

~~Consecutive sentences may be given only in the following cases:~~

- ~~1. When a prior felony sentence for a crime against a person has not expired or been discharged and one or more of the current felony convictions is for a crime against a person, and when the sentence for the most severe current conviction is executed according to the guidelines; or~~
- ~~2. When the offender is convicted of multiple current felony convictions for crimes against different persons, and when the sentence for the most severe current conviction is executed according to the guidelines; or~~
- ~~3. When the conviction is for escape from lawful custody, as defined in Minn. Stat. § 609.485, unless the offender escaped from an executed prison sentence. If the escape sentence is to be served concurrently with other sentences, the presumptive duration shall be that indicated by the appropriate cell of the Sentencing Guidelines Grid.~~

~~When the conviction is for escape from lawful custody, as defined in Minn. Stat. § 609.485, and the offender escaped from an executed prison sentence, it is presumptive for the sentence to be consecutive to the sentence for which the inmate was confined at the time the new escape offense was committed. The presumptive disposition for escapes from executed sentences shall be execution of the escape sentence.~~

~~It is also presumptive for the sentence for a felony conviction resulting from a crime committed by an inmate serving an executed prison sentence at a state correctional facility, or while on escape status from such a facility, to be consecutive to the sentence for which the inmate was confined at the time the new offense was committed. A concurrent sentence under these circumstances constitutes a departure from the presumptive sentence. A special, nonexclusive, mitigating departure factor may be used by the judge to depart from the consecutive presumption and impose a concurrent sentence: there is evidence that~~

~~the defendant has provided substantial and material assistance in the detection or prosecution of crime.~~

Presumptive Consecutive Sentences

Consecutive sentences are presumptive in the following cases:

1. When the conviction is for escape from lawful custody, as defined in Minn. Stat. § 609.485 and the offender escaped from an executed prison sentence; or
2. When the conviction is for a crime committed by an inmate serving an executed prison sentence at a state correctional facility, or while on escape status from such a facility.

Consecutive sentences are presumptive under the above criteria only when the presumptive disposition for the current offense is commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C. The presumptive disposition for escapes from executed sentences, however, is always commitment to the Commissioner of Corrections.

Under the circumstances above, it is presumptive for the sentence to be consecutive to the sentence for which the inmate was confined at the time the escape or other new offense was committed. A concurrent sentence under these circumstances constitutes a departure from the presumptive sentence except if the total time to serve in prison would be longer if a concurrent sentence is imposed in which case a concurrent sentence is presumptive. A special, nonexclusive, mitigating departure factor may be used by the judge to depart from the consecutive presumption and impose a concurrent sentence: there is evidence that the defendant has provided substantial and material assistance in the detection or prosecution of crime.

For each presumptive consecutive offense sentenced consecutive to another offense(s), a criminal history score of one, or the mandatory minimum for the offense, whichever is greater, shall be used in determining the presumptive duration. For persons sentenced under Minn. Stat. § 609.229, subd. 3 where there is a sentence for an offense committed for the benefit of a gang, the presumptive duration for the underlying crime with the highest severity level if sentenced consecutively, would include additional months as outlined in Section II.G and using the respective criminal history score appropriate for consecutive sentencing.

Permissive Consecutive Sentences

Except when consecutive sentences are presumptive, consecutive sentences are permissive (may be given without departure) only in the following cases:

1. A current felony conviction for a crime against a person may be sentenced consecutively to a prior felony sentence for a crime against a person which has not expired or been discharged; or
2. Multiple current felony convictions for crimes against persons may be sentenced consecutively to each other; or
3. A current felony conviction for escape from lawful custody, as defined in Minn. Stat. § 609.485, when the offender did not escape from an executed prison sentence, may be sentenced consecutively to the sentence for the offense for which the offender was confined; or
4. A current felony conviction for a crime committed while on felony escape from lawful custody, as defined in Minn. Stat. § 609.485, from a nonexecuted felony sentence may be sentenced consecutively to the sentence for the escape or for the offense for which the offender was confined.

Consecutive sentences are permissive under the above criteria only when the presumptive disposition for the current offense is commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C. If the judge pronounces a consecutive stayed sentence in these circumstances, the stayed sentence is a mitigated dispositional departure, but the consecutive nature of the sentence is not a departure if the offense meets one of the above criteria. The consecutive stayed sentence begins when the offender completes the term of imprisonment and is placed on supervised release.

For each offense sentenced consecutive to another offense(s), other than those that are presumptive, a zero criminal history score, or the mandatory minimum for the offense, whichever is greater, shall be used in determining the presumptive duration. For persons sentenced under Minn. Stat. § 609.229, subd. 3 where there is a sentence for an offense committed for the benefit of a gang, the presumptive duration for the underlying crime with the highest severity level if sentenced consecutively, would include additional months as outlined in Section II.G and using the respective criminal history score appropriate for consecutive sentencing. The presumptive duration for each offense sentenced concurrently shall be based on the offender's criminal history as calculated by following the procedures outlined in II.B. ~~For persons given consecutive sentences, the sentence durations for each separate offense sentenced consecutively shall be aggregated into a single presumptive sentence. The presumptive duration for offenses sentenced consecutively is determined by locating the Sentencing Guidelines Grid cell defined by the most severe offense and the offender's criminal history score and by adding to the duration shown therein the duration indicated for every other offense sentenced consecutively at their respective levels of severity but at the zero criminal history column on the Grid.~~ The purpose of this procedure is to count an individual's criminal history score only one time in the computation of consecutive sentence durations.

~~For persons given presumptive consecutive sentences, the presumptive duration is determined by a criminal history score of one rather than at the zero criminal history column on the Grid.~~

~~When a current conviction is sentenced consecutive to a prior indeterminate or presumptive sentence, the presumptive duration for the current conviction is determined by locating the severity level appropriate to the current conviction offense and the zero criminal history column or the mandatory minimum, whichever is greater.~~

Comment

II.F.01. ~~Consecutive sentences are a more severe sanction because the intent of using them is to confine the offender for a longer period than under concurrent sentences. If the severity of the sanction is to be proportional to the severity of the offense, consecutive sentences should be limited to more severe offenses. Generally, the Commission has established criteria which permits, but does not require, the use of consecutive sentences in the instances listed in the guidelines. For felony convictions committed while an offender is serving an executed prison sentence or while on escape status from such a facility, it is presumptive to impose the sentence for the current offense consecutive to the sentence for which the inmate was confined at the time the new offense was committed. The guidelines create a presumption against the use of consecutive sentences in all other cases not meeting the guideline criteria. If consecutive sentences are used in such cases, their use constitutes a departure from the guidelines and written reasons are required.~~

In all cases the Commission suggests that judges consider carefully whether the purposes of the sentencing guidelines (in terms of punishment proportional to the severity of the offense and the criminal history) would be served best by concurrent rather than consecutive sentences.

II.F.02. ~~The guidelines provide that when one judge gives consecutive sentences in cases involving multiple current convictions, sentence durations shall be aggregated into a single fixed presumptive sentence. Moreover, the Commission recommends that when an offender is charged with multiple offenses within the same judicial district the trials or sentencings be consolidated before one judge, whenever possible. This will allow the judge to perform the aggregation process described in the guidelines if consecutive sentences are given.~~

~~The order of sentencing when consecutive sentences are imposed by the same judge is to sentence the most severe conviction offense first in the order in which the offenses occurred. For persons given permissive consecutive sentences, the presumptive duration for the conviction each offense sentenced consecutive to another offense(s) is determined by the severity level appropriate to the conviction offense at the zero criminal history score of the offender column, or the mandatory minimum, whichever is greater.~~

For each presumptive consecutive offense sentenced consecutive to another offense(s), the presumptive duration is determined by a criminal history score of one rather than at the zero criminal history column on the Grid, or the mandatory minimum, whichever is greater. For persons sentenced under Minn. Stat. § 609.229, subd. 3 where there is a sentence for an offense committed for the benefit of a gang, the presumptive duration for the underlying crime with the highest severity level if sentenced consecutively would include additional months as outlined under Section II.G. and using the respective criminal history score appropriate for consecutive sentencing. When there are multiple offenses at the highest severity level, the earliest occurring offense among those at the highest severity level shall be sentenced first. After sentencing the most severe offense or the earliest occurring offense among those at the highest severity level, subsequent sentences shall be imposed in the order in which the offenses occurred. A zero criminal history score shall be used in determining the presumptive duration for each subsequent offense sentenced consecutively.

~~When concurrent and consecutive sentences are imposed for different offenses, the most severe offense involving consecutive sentencing shall be sentenced first. When there are multiple offenses at the highest severity level, the earliest occurring offense among those at the highest severity level shall be sentenced first. After sentencing the most severe offense or the earliest occurring offense among those at the highest severity level, subsequent sentences shall be imposed in the order in which the offenses~~

~~occurred. The presumptive duration for each offense sentenced consecutively shall be based on a zero criminal history score. The presumptive duration for each offense sentenced concurrently shall be based on the offender's criminal history as calculated by following the procedures outlined in II.B.~~

~~If multiple trials or sentencings cannot be consolidated before one judge, and if two or more judges give presumptive sentences some of which are given consecutively to others, the following method can be used.~~

~~The second or subsequent judge can pronounce the durations indicated in the Sentencing Guidelines Grid at the zero criminal history column for the severity level for the current offense, and can state that this sentence would be consecutive to the previous presumptive sentence. The service of the consecutive sentence begins at the end of any incarceration arising from the first sentence. The institutional records officer will aggregate the separate durations into a single fixed presumptive sentence, as well as aggregate the terms of imprisonment and the periods of supervised release. For example, if the Judge A executed a 44 month fixed presumptive sentence, and Judge B later executes a 24 month fixed presumptive sentence to be served consecutively to the first sentence, the records officer has the authority to aggregate these the sentences into a single 68 month fixed presumptive sentence, with a specified minimum 45.3 month term of imprisonment and a specified maximum 22.7 month period of supervised release.~~

~~Under this method, if the most severe current offense is sentenced first, the resulting aggregated sentence lengths would be the same as if one judge had sentenced the offenses consecutively.~~

~~It is permissive for a sentence for an escape conviction from a nonexecuted prison sentence to be consecutive to any other current sentence and any prior sentence regardless of whether the other sentences are for crimes against the person. It is presumptive for a sentence for an escape conviction from an executed prison sentence to be consecutive to the sentence for which the inmate was confined at the time the new offense was committed. If the sentencing judge determines that the sentence for an escape conviction is to be consecutive with sentences for other current felony convictions, the escape conviction should be sentenced last with the presumptive duration found at the zero criminal history column and the appropriate severity level. For persons given presumptive consecutive sentences, the presumptive duration is determined by a criminal history score of one rather than at the zero criminal history column on the Grid.~~

~~In all cases the Commission suggests that judges consider carefully whether the purposes of the sentencing guidelines (in terms of punishment proportional to the severity of the offense and the criminal history) would be served best by concurrent rather than consecutive sentences.~~

~~**II.F.03.** For cases with a prior felony sentence, which has neither expired nor been discharged, and a single current conviction, and when the current conviction is sentenced consecutive to the prior, the presumptive duration for the current conviction is found at the zero criminal history column and the appropriate severity level, unless the consecutive sentence is presumptive. For person given presumptive consecutive sentences, the presumptive duration is determined by a criminal history score of one rather than at the zero criminal history column on the Grid. The service of the consecutive sentence begins at the end of any incarceration arising from the first sentence. The Commissioner of Corrections has the authority to establish policies regarding durations of confinement for persons sentenced for crimes committed before May 1, 1980, and will continue to establish policies for the durations of confinement for persons revoked and reimprisoned while on parole or supervised release, who were imprisoned for crimes committed on or after May 1, 1980.~~

~~If an offender is under the custody of the Commissioner of Corrections pursuant to a sentence for an offense committed on or before April 30, 1980, and if the offender is convicted of a new felony committed on or after May 1, 1980, and is given a presumptive sentence to run consecutively to the previous indeterminate sentence, the phrase "completion of any incarceration arising from the prior sentence" means the target release date which the Commissioner of Corrections assigned to the inmate for the offense committed on or before April 30, 1980 or the date on which the inmate completes any incarceration assigned as a result of a revocation of parole connected with the preguidelines offense.~~

~~The presumptive disposition for escapes from executed sentences is commitment to the Commissioner of~~

Corrections. It is presumptive for an escape from an executed prison sentence to be consecutive to the sentence for which the inmate was confined at the time the new offense was committed. Consecutive sentences are also presumptive for a crime committed by an inmate serving an executed prison sentence at a state correctional facility or while on escape status from such a facility if the presumptive disposition for the crime is commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C..

In certain situations a concurrent sentence would result in an offender serving longer in prison than a consecutive sentence and in such situations a concurrent sentence is presumptive. For example, an inmate has four months left to serve before release on the first offense. The new offense is a severity level IV crime and the inmate's criminal history score is five. If sentenced concurrently, the presumptive duration would be 32 months, the term of imprisonment would be 21 months and because the sentence runs concurrently with the first offense, the total time to be served would be 21 months. If the new offense were sentenced consecutively, the presumptive duration would be 15 months, the term of imprisonment would be 10 months and adding the 10 months to the four months left to serve on the first offense would equal 14 months or 7 months less than the time to be served under concurrent sentencing. In a situation like this example, concurrent sentencing would be presumptive.

For persons given presumptive consecutive sentences, the presumptive duration is determined by a criminal history score of one, or the mandatory minimum, whichever is greater.

~~**II.F.04.** The sentencing guidelines provide that sentences must be stayed or imposed if they are to be used in computing the criminal history score. When multiple convictions are sentenced concurrently, separate sentences arising out of separate behavioral incidents must be stayed or imposed on each conviction if they are to be used in computing future criminal history scores. If an offender is convicted of two offenses arising from separate behavioral incidents, but the judge stayed or imposed a sentence for only one conviction, only one point would accrue to the prior felony sentences item in the computation of a future criminal history score. If the judge stayed or imposed a sentence for each conviction offense in this example, then two points would accrue to the prior felony sentences item in future criminal history score computation.~~

~~The phrase "multiple current felony convictions" means two or more cases in which the defendant has been found guilty by verdict or by a finding of the Court following trial, or in which the defendant has entered a plea of guilty, and for which sentences have not been stayed or imposed. Multiple current convictions may occur before one Court or two or more Courts.~~

The Commission's policy on permissive consecutive sentencing outline the criteria that are necessary to permit consecutive sentencing without the requirement to cite reasons for departure. Judges may pronounce consecutive sentences in any other situation by citing reasons for departure. Judges may also pronounce durational and dispositional departures both upward and downward in cases involving consecutive sentencing if reasons for departure are cited. The reasons for each type of departure should be specifically cited. The procedures for departures are outlined in Section II.D. of the guidelines.

If the presumptive disposition for an escape conviction from a nonexecuted prison sentence is commitment to the Commissioner of Corrections, it is permissive for the sentence to be consecutive to any prior sentence regardless of whether the other sentences are for crimes against the person. The presumptive duration for the escape is found at the zero criminal history column and the appropriate severity level. In addition to making the sentence for the escape offense consecutive to the sentence for which the offender was confined, it is also permissive to pronounce a sentence for any offense committed while on escape status that carries a presumptive disposition of commitment to the Commissioner of Corrections, consecutive to the sentence for the escape conviction or consecutive to the sentence for which the offender was confined.

II.F.05. The Commissioner of Corrections has the authority to establish policies regarding durations of confinement for persons sentenced for crimes committed before May 1, 1980, and will continue to establish policies for the durations of confinement for persons revoked and reimprisoned while on parole or supervised release, who were imprisoned for crimes committed on or after May 1, 1980.

If an offender is under the custody of the Commissioner of Corrections pursuant to a sentence for an

offense committed on or before April 30, 1980, and if the offender is convicted of a new felony committed on or after May 1, 1980, and is given a presumptive sentence to run consecutively to the previous indeterminate sentence, the phrase "completion of any incarceration arising from the prior sentence" means the target release date which the Commissioner of Corrections assigned to the inmate for the offense committed on or before April 30, 1980 or the date on which the inmate completes any incarceration assigned as a result of a revocation of parole connected with the preguidelines offense.

II.F.05. II.F.06. Minn. Stat. § 624.74 provides for a maximum sentence of three years or payment of a fine of \$3000 or both, for possession or use of metal-penetrating bullets during the commission of a crime.

Any executed felony sentence imposed under Minn. Stat. § 624.74 shall run consecutively to any felony sentence imposed for the crime committed with the weapon, thus providing an enhancement to the sentence imposed for the other offense. The extent of enhancement, up to the three year statutory maximum, is left to the discretion of the Court. If, for example, an offender were convicted of Aggravated Robbery with use of a gun and had a zero criminal history score, the mandatory minimum sentence and the presumptive sentence for the offense would be 36 months; if the offender were also convicted of Minn.

Stat. § 624.74, Metal-Penetrating Bullets, the Court could, at its discretion, add a maximum of 36 months, without departing from the guidelines.

~~**II.F.06.** The criterion that crimes must be against different persons for permissive consecutive sentencing is designed to exclude consecutive sentences in two types of situations. One type involves multiple offenses against a victim in a single behavioral incident such as burglary with a dangerous weapon and aggravated robbery with bodily harm. The requirement of different victims is also intended to exclude consecutive sentences in domestic abuse and child abuse situations when there are multiple incidents perpetrated against a victim over time. Assault, criminal sexual conduct, and incest are the conviction offenses most frequently found in domestic abuse and child abuse cases. Multiple incidents against a victim typifies these types of situations. In fact, one criminal sexual conduct provision delineates multiple incidents as an element of the offense. The high severity rankings assigned to offenses that tend to involve very young victims reflect the understanding that multiple incidents generally occur in these kinds of situations. The Commission believes that a uniform policy reflected in high severity rankings provides the best approach in sentencing these cases. Permissive consecutive sentences would result in enormous disparity based on varying charging practices of prosecutors and discretionary judicial decisions.~~

~~There are rare instances in which multiple person crimes are committed at different times against a victim in other than a domestic abuse or child abuse situations. For example, a pharmacist could be a victim of an aggravated robbery at one point and some time later be robbed by the same offender a second time. Circumstances such as these are clearly atypical. In the rare instances in which this type of situation occurs, consecutive sentencing is permissive under the guidelines.~~

F. In addition to these specific changes to the Consecutive Policy, the Commission adopted an increase to the severity level for Escape from Custody that involves violence.

Severity Level VII

Escape from Custody - 609.485, subd. 4(5)

Severity Level VI

Escape from Custody - 609.485, subd. 4(5)